

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

Cody Richard,

Plaintiff,

v.

Conn Appliances, Inc.,

Defendant.

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: Civil Action No.: CIV-16-499-C
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**COMPLAINT AND
DEMAND FOR JURY TRIAL**

For this Complaint, Plaintiff, Cody Richard, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. Plaintiff, Cody Richard ("Plaintiff"), is an adult individual residing in Norman, Oklahoma, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

4. Defendant, Conn Appliances, Inc. (“Conn”), is a Texas business entity with an address of 4055 Technology Forest Boulevard, Suite 210, The Woodlands, Texas 77381-2008, and is a “person” as the term is defined by 47 U.S.C. § 153(39).

FACTS

5. In or around September 2015, Conn began placing calls to Plaintiff’s cellular telephone, number 405-xxx-1318, from telephone numbers 405-463-1352 and 405-463-1349.

6. When Plaintiff answered calls from Conn, he heard silence before he was transferred to a live representative.

7. The foregoing is indicative of a predictive dialer, an automatic telephone dialing system (“ATDS”) under the TCPA.

8. In or around November 2015, Plaintiff spoke with a Conn representative and demanded that the calls to his cellular telephone number cease.

9. Nevertheless, Conn continued to place automated calls to Plaintiff’s cellular telephone number.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

10. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

11. At all times mentioned herein, Defendant called Plaintiff’s cellular telephone number using an ATDS.

12. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (“FCC”) defines a predictive dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”*2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

13. Defendant’s telephone system(s) have all the earmarks of a predictive dialer.

14. When Plaintiff answered calls from Defendant, he heard silence before Defendant’s telephone system would connect him to the next available representative.

15. Defendant’s predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

16. Defendant placed automated calls to Plaintiff’s cellular telephone number despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

17. The calls from Defendant to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

19. As a result of each of Defendant’s knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

Dated: May 12, 2016

Respectfully submitted,

By /s/ Sergei Lemberg

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